

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA)	
)	Criminal No.: 3:00-CR-400-P
v.)	
)	Judge Jorge A. Solis
MARTIN NEWS AGENCY, INC.; and)	
BENNETT T. MARTIN,)	
)	FILED: April 30, 2001
Defendants.)	

RESPONSE OF THE UNITED STATES TO
SUPPLEMENTAL MOTION NUMBER TWO FOR PRODUCTION
AND DISCOVERY PURSUANT TO RULE 16, FEDERAL RULES
OF CRIMINAL PROCEDURE AND BRIEF IN SUPPORT THEREOF

I
INTRODUCTION

Defendants' *Supplemental Motion Number Two for Production and Discovery Pursuant to Rule 16, Federal Rules of Criminal Procedure and Brief in Support Thereof* ("Motion") asks the Court to order the production of exhibits, graphs and charts created by the United States in preparation for trial. Defendants' Motion should be denied.

To begin, the United States has already produced all of the underlying documents that it will rely upon at trial. What defendants seem to want, and what this Court has already addressed, is the production of all materials that summarize or display the documents already produced. The United States does not read the defendants' Motion as requesting the work product of the prosecutors which will not be introduced as part of the government's case-in-chief, such as preliminary drafts of exhibits, since these materials represent non-discoverable work product.

In its pre-trial order, the Court directed the parties to file a list of its exhibits on June 22, 2001, and to furnish the court with copies. The United States intends to comply with that schedule. But these internally-generated work products of the prosecutors, some of which ultimately may be used as trial exhibits, are not in final form at this time. Moreover, because the United States intends to use computer technology to assist in its presentation of the evidence, the United States intends to provide defendants with an electronic copy of most of its exhibits before trial to eliminate any technological issues that may arise. This is more than is required, and, consequently, the Court should deny defendants' Motion.

II

THE UNITED STATES HAS SATISFIED ITS BURDEN UNDER RULE 16

A. ALL DOCUMENTS HAVE ALREADY BEEN PRODUCED

Pursuant to its Rule 16 obligations, the United States has disclosed to defendants more than 120 boxes of materials for their inspection and review. These documents represent all of the materials acquired from the three magazine wholesalers in the Dallas-Fort Worth area at the time of the charged conspiracy (i.e., Martin News, PMG/Trinity News, and C&S News); all of the materials produced to the government by retailers who sold the magazines in the Dallas-Fort Worth area during the charged conspiratorial period; and materials from other persons associated with magazine distribution in the Dallas-Fort Worth area during the conspiracy. Defendants have had access to all of these underlying documents since January and February, 2001. Now, defendants ask the United States to produce any summaries, charts, graphs or other materials which it has developed for use at trial. This is an improper request and should be denied.

B. THE COURT HAS DETERMINED WHEN EXHIBITS ARE DUE

Pretrial discovery is left to the sound discretion of the trial court. United States v. Watson, 669 F.2d 1374, 1384 (11th Cir. 1982). That discretion will only be overturned upon a showing that the court exceeded its discretion and that the error resulted in substantial prejudice to the defendants. Id.; United States v. Bullock, 551 F.2d 1377, 1384 (5th Cir. 1977). This Court has established a schedule for the orderly administration of pretrial matters. A component of that schedule requires the parties to file an exhibit list (with copies of exhibits furnished to the Court) by June 22, 2001. Order Rescheduling Trial, entered on April 5, 2001.¹ The United States intends to abide by that schedule. As such, defendants will be provided with a copy of the exhibit list as they are provided with copies of all filings. A copy of each exhibit will be furnished to the Court.²

In an effort to expedite the proceedings, the United States also intend to provide electronic copies of much of its documentary materials to the defendants. As was stated in the pretrial conference held on April 5, 2001, the United States intends to use computer technology to assist the jury in viewing and understanding documentary materials. As part of its pretrial preparation, the United States is accustomed to addressing and working out any technology issues

¹ This Order is reinforced by looking at the Court Rules and Procedures, which states that the “Scheduling Order addresses the issue of when exhibits are due, if the Scheduling Order does not so address, follow the local rules.” Court Rules and Procedures, p.2 at ¶ 8. The Court Scheduling Order is therefore the definitive statement on the when exhibits are due, which in this case is June 22, 2001.

² At this time, the United States has not finalized its trial exhibits, which is not surprising given that the target date established by the Court is almost a month away. It would be premature, and confusing, to require the United States to provide preliminary drafts of its internal work product to defendants. Moreover, it would be unfair to change the rules of the game at this late date.

that may arise in a cooperative manner. Necessary to that discussion will be a review by both parties of documents and related materials that might be shown to the jury via computer. The United States will therefore shortly be discussing with defendants the exchange of exhibits and related materials that will effectively moot defendants' Motion.

III
CONCLUSION

Discovery issues are within the sound discretion of the Court. The Court has spoken on the matter by indicating when the United States must have its exhibits prepared. The United States will meet the Court's schedule for the production of exhibits and will in all likelihood produce the exhibits before trial in an electronic format. The Court should therefore deny defendants' Motion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via Federal Express to the Office of the Clerk of Court on this 27th day of April, 2001. In addition, copies of the above-captioned pleading were served upon the defendants via Federal Express on this 27th day of April, 2001.

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